IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6594 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDUBEN G PAGARE

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 6594 of 1999

MR DP VORA for Petitioner No. 1

MR KL PANDYA ASSTT GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 11/09/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.D.P.Vora on behalf of the petitioner and learned AGP Mr.K.L.Pandya for respondent

State Government Authority.

#. The grievance of the present petitioner is that she was appointed as Sweeper on part time basis on date 11th April, 1986 and remained as Part-time employee upto 1st September, 1989. Thereafter, she was appointed as full timer employee with the respondent and as full time employee, she received salary and worked upto 4th September, 1998 and thereafter, all of sudden, the petitioner has been reverted as Part time employee and subsequently, recovery order has also been issued against the petitioner purporting recovery of the difference of the salary for the period from 1989-98.

#. Learned advocate Mr.D.P.Vora submitted that as per the document produced on record on page.24, wherein it is mentioned that her seniority will be considered after service of the petitioner is regularised by the respondent. Mr.Vora has also submitted that there is one vacancy available with the respondent but the respondent is not considering the case of the petitioner for regularisation of her services.

#. Learned AGP Mr.K.L.Pandya for the respondent has submitted that the petitioner was not appointed after following due process of law and she was not selected by the Committee. It is further contended that she is not entitled to regular salary and she was wrongly promoted as the full time employee and therefore, her services cannot be regularised by the respondent. Mr.Pandya, learned AGP has also submitted that Circular dated 26th December, 1980 has been kept in abeyance pursuant to the circular issued by the Finance Department dated 28th October, 1991.

#. I have considered submissions made by the respective learned advocates for the parties. The facts which are narrated above makes clear that initially the petitioner was appointed as part time employee and she remained in service as part time employee with effect from 11th April, 1986 to 1st September, 1989. Thereafter, the petitioner was appointed as the full time employee and remained as full time employee upto 4th September, 1998 and , again the petitioner was reverted as part time employee with effect from 4th September, 1998 and ultimately, the order of recovery has been passed for recovering the difference of the salary received by the petitioner from the respondent for the period from 1989 1998. It has also come on record that her seniority is also not fixed because of the fact that service of the petitioner is not regularised by the respondent. In

light of this fact, the view taken by this Court in case of JAYANTILAL VALJIBHAI POTADIA v. STATE OF GUJARAT reported in 2003 [2] G.L.H. [U.J.] 4. The relevant observations made by this Court in the aforesaid decision are reproduced as under :

"5. There is no disputes about the fact that the appointment of the petitioner by order dated 15.7.1977, as per Annexure A to the petition, was made as a Watchman-cum-Hamal on a part-time basis as contemplated by the Government Resolution dated 24-3-1976 which was referred to in the order of his appointment, on a salary of Rs.150/per month for working for four hours during the day. It was also stipulated that he would be made payment as per the number of days that he worked. Besides working as a Watchman, he was required to do other work such as of cleaning and filling water, as mentioned in the order. The petitioner accepted the appointment as a part-time watchman on these terms. Mere number of years of his having worked as a part-time cannot create any right in his favour to become a regular employee. Whether services of a part-time is needed or a full time employee is needed or any regular post should be created or not for such work are the matters which are to be decided by the Administration having regard to its own requirements and resources. However, it appears that the Government in its Finance Department issued Circular No.PTE-1080-288-CH dated 26.12.1980 directing the Heads of the Departments to make efforts as per the prescribed recruitment rules and procedure for filling in the posts from the part-time employees who may have continuously worked for three years and to absorb such incumbents in regular posts that may be available under the control of the Head of Department. It appears that even the GAD had issued circular dated 15.10.1992 directing the concerned officers to implement the guidelines issued form time to time for appointing part-time sweepers in regular post of peon in the cadre of Class IV on completion of ten years as part-time employees. These circulars were referred to in the decision of this Court in B.C.Wadhwana v. Director General of Police and Another reported in XXXIX [3] GLR 2041.

6. When there were instructions issued by

the Government specifically as to how the question of regularisation of the part-timers who had put in more than three years' service was to be considered by the Heads of the Departments, the termination of the petitioner's employment as a part-timer under the impugned order dated 4-2-1987 without considering his case in light of the extant circulars was not justified. It appears that the impugned order was communicated by the Social Welfare Officer. The case of the part-timer who had put in more than three years of service was required to be considered for regularisation by the Head of the Department had applied his mind to the facts of the case in the context of the Government Circular having bearing on the question of regularization of the services of a part-timer. The petitioner had put in nearly ten years of service as part-timer and as on today, he has been working for more than twenty five years. Since both the learned counsel do not know whether the service of the petitioner have been regularised during this long period of pendency of this petition, we have to assumed that they are not regularized so far. If they are not regularized, a direction will have to be issued on the respondents to consider the case of the petitioner for regularisation in light of the circulars issued by the Government from time to time having bearing on the question of regularisation of the part-timers who have put in more than a certain number of years of service mentioned in those circulars. The impugned order of termination of the petitioner's service as a part-timer having been issued without considering the question of his regularisation as per the guidelines issued by the Government is, therefore, arbitrary and cannot be sustained."

#. It is also pertinent to note that the Principal of the College, Ahwa of District Dang has passed the order dated 1st September, 1989 giving the petitioner full time appointment in place of one Shri Chaudhari being full time employee with regular salary with further recommendations that during working of the petitioner as full time employee, her part time status is required to be regularised by the Department. Therefore, considering this letter / order passed by the Principal, in my opinion, now there is no necessity to recover any amount from the petitioner by the respondents.

#. In view of above discussion and the observations made by this Court in similar case and consider the facts of the present case, in my opinion, if some suitable direction is issued on the respondent to consider the case of the petitioner for regularisation of her services within some reasonable time and not recovering any amount of difference of the salary for the period from 1989-98 from the petitioner, will meet the ends of justice between the parties. Therefore, it is directed to the respondents to consider the case of the petitioner for regularisation her service after completion of the three years' period as part time employee with effect from 11th April, 1986 as per the Government Resolution as referred to in the judgment of this Court referred to above and to pass appropriate orders within three months from the date of receipt of copy of this order. The respondents are also directed not to effect any recovery from the salary of the petitioner and after regularisation of her service, her seniority shall be fixed by the respondent according to the date of regularisation by the respondents.

In view of above observations and directions, present petition is disposed of accordingly.

Rule is made absolute to the extend indicated above with no order as to costs.

Direct Service permitted.

Date : 12.9.2003 [H.K.Rathod, J.]

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